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8 (erroneously sued as Legendary Pictures),
Christopher Nolan, Jonathan Nolan, David
9 S. Goyer, Andrew Wachowski, and Lana
Wachowski

10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

13 CONSTANTINO BASILE, an
14 individual,

15 Plaintiff,

16 v.

17 WARNER BROS. ENTERTAINMENT
INC., a Delaware corporation;
18 LEGENDARY PICTURES, a
California corporation;
19 CHRISTOPHER NOLAN, an
individual; JONATHAN NOLAN, an
20 individual; DAVID S. GOYER, an
individual; ANDREW WACHOWSKI,
21 an individual; LANA WACHOWSKI,
an individual; and JOHN/JANE DOES
22 1 through 10, inclusive,

23 Defendants.

Case No. CV 15-5243-DMG (MRWx)

The Honorable Dolly M. Gee

**DEFENDANTS' NOTICE OF
MOTION AND MOTION TO
DISMISS COMPLAINT WITH
PREJUDICE PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 12(b)(6);
MEMORANDUM OF POINTS AND
AUTHORITIES**

[(Proposed) Order; Request for Judicial
Notice filed concurrently herewith]

Date: September 11, 2015
Time: 9:30 am.
Courtroom: 7

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on September 11, 2015 at 9:30 a.m. or as soon thereafter as this matter may be heard, in the courtroom of the Honorable Dolly M. Gee, located in the United States Courthouse, 312 N. Spring Street, Courtroom 7, Los Angeles, CA 90012, Defendants Warner Bros. Entertainment Inc., Legend Pictures, LLC (erroneously sued as Legendary Pictures), Christopher Nolan, Jonathan Nolan, David S. Goyer, Andrew Wachowski, and Lana Wachowski (collectively, "Defendants") will and hereby do move this Court to dismiss Plaintiff's Complaint with prejudice on the grounds that (1) Plaintiff's claim for copyright infringement fails because, as a matter of law, the works at issue are not substantially similar in a manner protected by copyright law; and (2) the defects in Plaintiff's claim for copyright infringement cannot be cured by an amendment of the Complaint.

Pursuant to Local Rules 7-3 and 16-12(c), no conference of counsel was required because Plaintiff is proceeding *pro se*. Nevertheless, this Motion is made following a conference between Defendants' counsel Matthew O'Brien and Plaintiff on August 5, 2015.

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1 This Motion is based on this Notice of Motion, the accompanying
2 Memorandum of Points and Authorities, the [Proposed] Order and Request for
3 Judicial Notice filed concurrently herewith, all of the pleadings and other documents
4 on file in this case, all other matters of which the Court may take judicial notice, and
5 any further argument or evidence that may be received by the Court at the hearing.

6
7 DATED: August 10, 2015

CALDWELL LESLIE & PROCTOR, PC

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9
10 By /s/

LINDA M. BURROW

11 Attorneys for Defendants Warner Bros.
12 Entertainment Inc., Legend Pictures, LLC
13 (erroneously sued as Legendary Pictures),
14 Christopher Nolan, Jonathan Nolan, David S.
15 Goyer, Andrew Wachowski, and Lana
16 Wachowski
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TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 2

 A. Plaintiff’s Works 2

 B. The Dark Knight Rises..... 4

 C. Jupiter Ascending..... 7

III. LEGAL STANDARD FOR A RULE 12(b)(6) MOTION 10

IV. THE COMPLAINT SHOULD BE DISMISSED WITH PREJUDICE 11

 A. Legal Standard for Direct Copyright Infringement 11

 B. The Dark Knight Rises Is Not Substantially Similar to Plaintiff’s Works 12

 1. Plot and Sequence of Events 12

 2. Characters 15

 3. Mood, Pace, Theme, Setting, and Dialogue 17

 C. Jupiter Ascending Is Not Substantially Similar to Plaintiff’s Works 19

 1. Plot and Sequence of Events 19

 2. Characters 21

 3. Mood, Pace, Theme, Setting, and Dialogue 22

 D. Plaintiff’s Conspiracy Allegations Are Irrelevant 23

 E. Leave to Amend Would Be Futile 24

V. CONCLUSION 24

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Althouse v. Warner Bros. Entm't</i> , No. CV 13-00696, 2014 WL 2986939 (C.D. Cal. Apr. 28, 2014).....	15, 19
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)	10
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007)	10, 11
<i>Benay v. Warner Bros. Entm't, Inc.</i> , 607 F.3d 620 (9th Cir. 2010)	13, 15, 16, 20, 21
<i>Berkic v. Crichton</i> , 761 F.2d 1289 (9th Cir. 1985)	12, 15, 20
<i>Campbell v. Walt Disney Co.</i> , 718 F.Supp.2d 1108 (N.D. Cal. 2010).....	2, 17, 24
<i>Cavalier v. Random House, Inc.</i> , 297 F.3d 815 (9th Cir. 2002)	12, 15, 18, 20, 21
<i>Christianson v. W. Publ'g Co.</i> , 149 F.2d 202 (9th Cir. 1945)	1, 12
<i>Feldman v. Twentieth Century Fox Film Corp.</i> , 723 F.Supp.2d 357 (D. Mass. 2010).....	14, 15, 17
<i>Flaherty v. Filardi</i> , 388 F.Supp.2d 274 (S.D.N.Y. 2005)	14
<i>Funky Films, Inc. v. Time Warner Entm't Co., L.P.</i> , 462 F.3d 1072 (9th Cir. 2006)	<i>passim</i>
<i>Gadh v. Spiegel</i> , No. CV 14-855, 2014 WL 1778950 (C.D. Cal. Apr. 2, 2014).....	24
<i>Goldberg v. Cameron</i> , 787 F.Supp.2d 1013 (N.D. Cal. 2011).....	18, 22

1	<i>Knappenberger v. City of Phoenix,</i>	
2	566 F.3d 936 (9th Cir. 2009)	24
3	<i>Kouf v. Walt Disney Pictures & Television,</i>	
4	16 F.3d 1042 (9th Cir. 1994)	12, 13, 20
5	<i>Mandeville-Anthony v. Walt Disney Co.,</i>	
6	No. CV 11-2137, 2012 WL 4017785 (C.D. Cal. July 28, 2012)	24
7	<i>Marder v. Lopez,</i>	
8	450 F.3d 445 (9th Cir. 2006)	11
9	<i>Muller v. Twentieth Century Fox Film Corp.,</i>	
10	794 F.Supp.2d 429 (S.D.N.Y. 2011)	14
11	<i>Olson v. Nat’l Broad. Co., Inc.,</i>	
12	855 F.2d 1446 (9th Cir. 1988)	15, 18, 23
13	<i>Phillips v. Murdock,</i>	
14	543 F.Supp.2d 1219 (D. Haw. 2008)	21
15	<i>Stechman v. Hart Brewing, Inc.,</i>	
16	143 F.3d 1293 (9th Cir. 1998)	2, 13, 19
17	<i>Stromback v. New Line Cinema,</i>	
18	384 F.3d 283 (6th Cir. 2004)	18, 23
19	<i>Three Boys Music Corp. v. Bolton,</i>	
20	212 F.3d 477 (9th Cir. 2000)	11
21	<i>UMG Recordings, Inc. v. Augusto,</i>	
22	628 F.3d 1175 (9th Cir. 2011)	11
23	<i>United States v. Corinthian Colleges,</i>	
24	655 F.3d 984 (9th Cir. 2011)	1, 11
25	<i>Van Buskirk v. Cable News Network, Inc.,</i>	
26	284 F.3d 977 (9th Cir. 2002)	11
27	<i>Walker v. Time Life Films, Inc.,</i>	
28	784 F.2d 44 (2d Cir. 1986)	14
	<i>Zella v. E.W. Scripps Co.,</i>	
	529 F.Supp.2d 1124 (C.D. Cal. 2007)	1, 12

1	Statutes	
2	Cal. Code Civ. Proc. § 391(b)	9
3	Other Authorities	
4	Fed. R. Civ. Proc. § 8(a)(2)	10
5	Fed. R. Civ. Proc. § 12(b)(6)	10, 11
6	L.R. 83	9
7	L.R. 83-8.2	9
8	L.R. 83-8.4	9

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Constantino Basile (“Plaintiff”) submitted two homework assignments (“Plaintiff’s Works”) to his film school in September 2011: a two-paragraph summary of a creation myth he entitled *The World of Jupiter* (see Compl., ¶¶ I, XII, Exh. 2); and an eight-slide description of a science-fiction concept he entitled *Crisis on Jupiter*, whose characters were based on photographs Plaintiff admits he copied from the Internet. (See *id.*, ¶¶ I, XII, Exh. 1.) As he did in his three prior lawsuits (see Part II.D, *infra*), Plaintiff claims that major motion pictures—in this case, *The Dark Knight Rises* and *Jupiter Ascending*—infringe upon these two assignments.

Plaintiff’s Works and the two alleged infringing films are part of his Complaint (see Compl., Exhs. 1, 2, 14, 23), and this Court may therefore determine non-infringement as a matter of law on a motion to dismiss. See *Christianson v. W. Publ’g Co.*, 149 F.2d 202, 203 (9th Cir. 1945) (citing cases).¹ And because no reasonable jury could find that Plaintiffs’ Works are substantially similar to either *The Dark Knight Rises* or *Jupiter Ascending*, this Court should grant Defendants’² motion and dismiss Plaintiff’s complaint in its entirety. See *Zella v. E.W. Scripps Co.*, 529 F.Supp.2d 1124, 1130-31 (C.D. Cal. 2007) (citing cases and observing that

¹ Even if Plaintiff had not submitted either his Works or the alleged infringing films as part of his Complaint, this Court could still determine similarity on a motion to dismiss, because Plaintiff’s Complaint “necessarily relies” on the contents of each work. See *United States v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir. 2011).

² Defendants are Warner Bros. Entertainment Inc. (producer and distributor of *The Dark Knight Rises* and *Jupiter Ascending*), Legend Pictures, LLC (whose predecessor Legendary Pictures, Inc. was a producer of *The Dark Knight Rises*; erroneously sued as Legendary Pictures), Christopher Nolan (director and co-writer of *The Dark Knight Rises*), Jonathan Nolan and David S. Goyer (other credited writers of *The Dark Knight Rises*), and Andrew and Lana Wachowski (directors and writers of *Jupiter Ascending*).

1 “[f]or fifty years, courts have...dismissed copyright claims that fail from the face of
2 the complaint (and in light of all matters properly considered on a motion to
3 dismiss)”). Indeed, because no amendment could change the fact that Plaintiff’s
4 Works are not similar to either of the alleged infringing films, this Court should
5 dismiss Plaintiff’s Complaint with prejudice and without leave to amend. *See*
6 *Campbell v. Walt Disney Co.*, 718 F.Supp.2d 1108, 1116 (N.D. Cal. 2010) (denying
7 leave to amend where the works were not substantially similar as a matter of law).

8 **II. FACTUAL BACKGROUND³**

9 **A. Plaintiff’s Works**

10 Exhibits 1 and 2 to the Complaint are “mp4” files apparently showing
11 continuous computer screenshots of someone opening attachments to Plaintiff’s
12 emails and then perusing those email attachments. (*See* Compl., Exhs. 1, 2.) The
13 email attachment depicted in Exhibit 1 is a PowerPoint presentation entitled *Crisis*
14 *on Jupiter*, with eight slides containing photographs accompanied by text. (*See id.*,
15 Exh. 1.) The PowerPoint presentation itself is not one of the Complaint’s 37
16 exhibits. As for Exhibit 2, the email attachment it depicts is a Word document
17 entitled *Jupiter*,⁴ apparently containing two paragraphs of text, between which the
18 “mp4” file toggles back and forth. (*See id.*, Exh. 2.) As with the PowerPoint
19 presentation, Plaintiff did not include the Word document itself as an exhibit.

20 Plaintiff alleges that he submitted his works (presumably the PowerPoint
21 presentation and Word document depicted in Exhibits 1 and 2 (collectively,
22 “Plaintiff’s Works”)) as assignments to the Los Angeles Film School in September
23

24 ³ For the purposes of this Motion, Defendants accept as true the factual allegations
25 in the Complaint, except those that are flatly contradicted by judicially noticeable
26 facts. *See Stechman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1295-96 (9th Cir. 1998).
27 For the record, Defendants vehemently deny Plaintiff’s factual allegations.

28 ⁴ Because the Complaint refers to this assignment as *The World of Jupiter*,
Defendants do the same herein.

1 2011. (*See* Compl., ¶¶ I, XII.) Plaintiff further alleges that he registered “[t]hese
2 literary works” with the United States Copyright Office. (*Id.*, ¶ XIV.)

3 This Court previously summarized Plaintiff’s Works in the following manner,
4 which is equally applicable here:

5 In Basile’s “*The World of Jupiter*,” Jupiter, “the Supreme Being
6 and creator of all things,” created a beautiful world. At first, the
7 society “lived in peace following the teachings of Jupiter.” As society
8 grew, however, people became more selfish and “began to fight and kill
9 and take from others,” disregarding the rules of Jupiter. This occurred
10 “[u]ntil one day an enormous object appeared in the sky, larger than
11 any star . . . Jupiter had returned with a vessel for the damned.” He
12 “cursed his people with enormous waves that began destroying
13 hundreds of thousands of people at a time.” Only those who were
14 faithful to Jupiter were spared, and they “would go on to live in peace
15 for eternity.”

16 It is not clear how Basile’s other work, “*Crisis on Jupiter*,”
17 relates to “*The World of Jupiter*,” and whether they depict the same
18 world or planet, but both involve a “Supreme Being” called Jupiter.
19 After the discovery of time travel, “the world was plagued with
20 problems.” The global military “regulated all travel” until Cipher, who
21 was in the military, abused his position and began unauthorized
22 traveling to bring back technology and sell it to corporations. In pursuit
23 of world dominion, Cipher obtained “brain implant technology,” which
24 he kept for himself, and stole technology to create his own time travel
25 machine. Two brothers, Earth and Mars, were chosen to hunt for the
26 “second time machine” because “Cipher cannot see their actions when
27 he travels through time.” Their mentor Kurzweil can help them counter
28

1 CIPHER's advanced technology, but the brothers must face betrayal and
2 attacks against them to save the world.
3 (Defendants' Request for Judicial Notice ("RJN"), Exh. E at 6 (internal citations
4 omitted); *id.*, Exh. G at 5 (same).)

5 **B. The Dark Knight Rises**

6 *The Dark Knight Rises* premiered in 2012 as the third installment of
7 Defendant Christopher Nolan's Batman trilogy, following *Batman Begins* and *The*
8 *Dark Knight*. (See RJN, Exh. H.) *The Dark Knight Rises* was written by
9 Defendants Jonathan Nolan and Christopher Nolan, with story by Defendants
10 Christopher Nolan and David S. Goyer, and was directed by Christopher Nolan.
11 (See *id.*)

12 *The Dark Knight* (the second film in the trilogy) ended with the killing of
13 Gotham District Attorney Harvey Dent, who, upon the death of his fiancé Rachel
14 Dawes (childhood friend of Bruce Wayne, aka Batman), is transformed from
15 idealistic crime fighter to murderous vigilante Two-Face. To protect Dent's legacy
16 as a symbol of hope for Gotham City, Batman convinces Police Commissioner
17 James Gordon to frame him for murders Dent committed. Gordon then destroys the
18 Bat Signal and Batman appears to be gone forever.

19 *The Dark Knight Rises* picks up eight years later, where a law called the Dent
20 Act appears to have nearly eradicated organized crime. (RJN, Exh. H at 7:13.)
21 Batman has never resurfaced, and his alter-ego, millionaire Bruce Wayne, has
22 become a recluse. Cat burglar Selina Kyle (aka Catwoman) obtains Wayne's
23 fingerprints from his home (*id.* at 15:58) and kidnaps a congressman. (*Id.* at 19:17.)
24 Kyle hands Wayne's fingerprints to Phillip Stryver, an assistant to Wayne's business
25 rival John Daggett, in exchange for Stryver's promise to give her a computer
26 program that would allow her to clear her criminal record. (*Id.* at 19:32.) Stryver
27 double-crosses Kyle, but Kyle tricks Daggett into using the congressman's stolen
28 phone to alert the police to their location. (*Id.* at 21:10.) Commissioner Gordon and

1 the police arrive to find the congressman, and then pursue Stryver's men into their
2 hideout in Gotham's sewer tunnels, while Kyle flees. (*Id.* at 23:00.) A masked
3 militant named Bane captures Gordon. (*Id.* at 24:38.) Gordon escapes, but is
4 wounded, and is rescued by John Blake (*id.* at 26:23), a once-orphaned patrol officer
5 who had deduced Batman's true identity as Bruce Wayne. (*Id.* at 29:10.) Gordon
6 promotes Blake to detective, with Blake reporting directly to him. (*Id.* at 1:07:21.)

7 Wayne's company, Wayne Enterprises, is bankrupted when Bane attacks the
8 Gotham Stock Exchange (*id.* at 42:30) using Wayne's fingerprints. (*Id.* at 57:00,
9 1:00:02.) Wayne Enterprises had, for the past several years, been developing a
10 fusion nuclear reactor, which, once operational, would provide clean energy for all
11 of Gotham. Fearing that Daggett, Bane's employer, would gain access to the
12 reactor, Wayne asks Wayne Enterprises board member Miranda Tate—the reactor
13 program's biggest supporter—to take over his company. (*Id.* at 1:01:57.)

14 Batman asks Kyle to take him to Bane. Kyle leads him into a trap set by
15 Bane, who reveals that he intends to destroy Gotham, to complete a mission begun
16 by notorious villain Ra's al Ghul. (*Id.* at 1:11:35, 1:13:40.) Bane fights Wayne and
17 delivers a crippling blow to his back (*id.* at 1:15:28), before taking him to a
18 subterranean prison. (*Id.* at 1:18:32.) The inmates tell Wayne the story of the only
19 prisoner ever to have escaped—al Ghul's child, who was born in the prison and
20 cared for by a fellow prisoner before escaping. Wayne assumes (ultimately
21 incorrectly) that the child is Bane. (*Id.* at 1:22:57.)

22 Meanwhile, Bane lures the Gotham police into the underground sewer
23 network and collapses the exits, trapping the police inside. (*Id.* at 1:30:26.) He kills
24 the mayor (*id.* at 1:29:47) and forces an abducted physicist, Dr. Leonid Pavel, to
25 convert the core of Wayne's reactor into a nuclear bomb. (*Id.* at 1:25:36.) Bane
26 uses the bomb to hold Gotham hostage and isolate the city from the world. (*Id.* at
27 1:35:35.) Bane, using a speech written, but never given, by Gordon, reveals
28 Gordon's cover-up of Dent's crimes (*id.* at 1:37:37) and releases the prisoners of

1 Gotham's Blackgate Penitentiary (who largely had been convicted under the Dent
2 Act), which leads to a revolution. (*Id.* at 1:39:58.) Gotham's wealthy and powerful
3 have their property expropriated, are dragged from their homes (*id.* at 1:40:30), and
4 are given show trials. (*Id.* at 1:40:38, 1:57:58, 2:03:08.)

5 After recovering from his injury, Batman escapes from the prison (*id.* at
6 1:56:50) and enlists Kyle (as Catwoman), Blake, Tate, Gordon, and Lucius Fox
7 (Wayne's business manager) to help stop the bomb's detonation. (*Id.* at 2:01:55.)
8 When the police and Bane's forces clash, Batman defeats Bane, but Tate intervenes
9 and stabs Batman, revealing herself to be Talia al Ghul, Ra's al Ghul's daughter,
10 and that she—not Bane—was the child who had escaped from prison. (*Id.* at
11 2:17:07.) Tate attempts to destroy Gotham by detonating the bomb, but Gordon,
12 using a signal blocker given to him by Batman, temporarily thwarts her plan. (*Id.* at
13 2:20:23.) With thirteen minutes remaining before the bomb explodes, Talia leaves
14 to find the bomb while Bane prepares to kill Batman, but Kyle shoots Bane. (*Id.* at
15 2:22:35.) Batman pursues Talia with the Bat, an aircraft Fox developed during
16 Batman's absence, hoping to bring the bomb back to the reactor where it can be
17 stabilized. (*Id.* at 2:24:18.) Talia's truck crashes, but she remotely destroys the
18 reactor before dying. (*Id.* at 2:27:43.) With no way to stop the detonation, Batman
19 uses the Bat to haul the bomb over the bay, where it explodes. (*Id.* at 2:31:10.)

20 In the aftermath, Batman is presumed dead and is honored as a hero. (*Id.* at
21 2:33:39.) With Wayne also presumed dead, his home Wayne Manor is left to the
22 city to become an orphanage, and his remaining estate is left to his longtime butler
23 and confidant, Alfred Pennyworth (*id.* at 2:34:16), who later discovers that Wayne is
24 not, in fact, dead when he sees him in Florence with Kyle. (*Id.* at 2:36:20.) Blake
25 resigns from the police force and inherits the Batcave, foreshadowing the next
26 Batman. (*Id.* at 2:36:35.)

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1 **C. Jupiter Ascending**

2 *Jupiter Ascending* premiered in February 2015. (*See* RJN, Exh. I.) *Jupiter*
3 *Ascending* was written and directed by Defendants Andrew and Lana Wachowski.
4 (*See id.*)

5 *Jupiter Ascending* opens with a voiceover by Jupiter Jones, the film’s
6 protagonist. Jupiter is the daughter of Maximilian Jones, who met Jupiter’s mother
7 Aleksa while they were both professors in Leningrad, Russia. (RJN, Exh. I at 1:00.)
8 Maximilian is killed in a robbery while Aleksa is pregnant with Maximilian’s child.
9 (*Id.* at 2:56.) Aleksa names the child Jupiter, after Maximilian’s favorite planet (*id.*
10 at 1:58), and they move to Chicago to live with Aleksa’s family.

11 On another planet, after the death of the matriarch of the House of Abrasax,
12 the matriarch’s children (Balem, Kalique, and Titus) quarrel over their inheritance,
13 which includes Earth. (*Id.* at 7:05.) (Later in the film, it is revealed that Earth’s
14 residents are unaware that the humans on Earth and countless other planets were
15 established by families of trans-human and alien royalty—including the Abrasax—
16 for the purpose of later “harvesting” (*id.* at 46:30) the resulting organisms to
17 produce a type of youth serum for the elites on other planets. (*Id.* at 55:42,
18 1:14:45).)

19 At the same time, back on Earth, a grown-up Jupiter Jones works with Aleksa
20 and her Aunt Nino to clean the homes of wealthy neighbors. (*Id.* at 8:15.) Three
21 intergalactic bounty hunters are scoping out Jones’ apartment, when they spot
22 someone else (Caine Wise) looking for Jones as well. (*Id.* at 9:51.) A chase ensues,
23 but Wise escapes. (*Id.* at 11:58.)

24 At Jones’s friend Katharine Dunlevy’s residence, Dunlevy and Jones are
25 attacked by extraterrestrial “Keepers.” (*Id.* at 16:10.) When Jones photographs
26 them, they erase her memory of the incident. (*Id.* at 16:17.) Jones decides to buy a
27 telescope, and agrees to sell her eggs to pay for it with the help of her cousin Vladie.
28 (*Id.* at 19:00.) During the egg donation procedure, the doctors and nurses are

1 revealed to be Balem's agents, sent to kill her (*id.* at 20:38), and she is saved by
2 Wise. (*Id.* at 21:24.)

3 Back on the alien planet, Wise is revealed to be a genetically engineered ex-
4 military hunter, whom Titus has sent to Earth to track down Jones. (*Id.* at 22:02.)
5 Back in Chicago, Wise informs Jones that he is an alien (*id.* at 23:50), and that the
6 Keepers are trying to kill her. (*Id.* at 24:36.) Another lengthy chase ensues (*id.* at
7 26:34), during which much of downtown Chicago is destroyed, but Titus and Wise
8 eventually escape the bounty hunters. (*Id.* at 31:25.) Wise informs Jones that she is
9 in the center of a fight among the Abrasax heirs, one of the most power dynasties in
10 the universe. (*Id.* at 31:47.)

11 Wise and Jones drive from Chicago to visit Stinger Apini, one of Wise's old
12 comrades, who realizes that Jones is royalty because of the way swarms of bees
13 obey her. (*Id.* at 37:58.) Apini agrees to help Jones (*id.* at 40:26), but a group of
14 bounty hunters captures her. (*Id.* at 48:55.) They take her to Kalique's palace on a
15 distant planet (*id.* at 51:50), where Kalique explains that Jones is genetically
16 identical to the dead matriarch, and therefore the Earth's rightful owner. (*Id.* at
17 52:50, 57:10.) Supported by Captain Tsing of the Aegis (an intergalactic police
18 force) (*id.* at 58:33), Wise retrieves her from Kalique, and brings her to the planet
19 Ores (the intergalactic capital city) to claim her inheritance. (*Id.* at 58:46, 1:06:56.)

20 Apini double-crosses Wise on behalf of Titus, who detains Jones and Wise.
21 (*Id.* at 1:10:00.) Titus reveals his plan to marry and then kill Jones and claim Earth,
22 and then throws Wise into the void. (*Id.* at 1:17:58.) Wise survives and saves
23 Jones. (*Id.* at 1:28:28.) Jones asks to return home, but learns that her family has
24 been taken hostage by Balem. (*Id.* at 1:30:30.)

25 In his refinery on another planet (which has a "Great Red Spot"), Balem
26 demands Earth in exchange for Jones's family. (*Id.* at 1:38:02.) Realizing that
27 Balem can "harvest" Earth only with her permission, Jones refuses. (*Id.* at 1:40:54.)
28 Balem tries to kill Jones, but she is rescued by Wise (*id.* at 1:42:14) and later defeats

1 Balem in a fight, after which Balem falls to his death. (*Id.* at 1:50:53.) Wise saves
2 Jones again, the refinery is destroyed, and they escape with Apini and Tsing. (*Id.* at
3 1:52:53.)

4 Jones's family is returned home with no memory of their disappearance (*id.* at
5 1:54:20), while Jones secretly retains ownership of the Earth. (*Id.* at 1:56:08.) Her
6 family buys her the telescope she wanted (*id.* at 1:55:18) and Wise receives a pair of
7 wings earlier removed from his body. (*Id.* at 1:56:44.) During the ending credits it
8 is revealed that the planets that make up the universe form endless DNA patterns.
9 (*Id.* at 2:00:16.)

10 ***D. Plaintiff's Complaint***

11 Plaintiff alleges that after he submitted his Works to his instructors at the Los
12 Angeles Film School, the Works were sold to "other writers, who fused Plaintiff's
13 material into the various films they were writing at that time" (Compl., ¶ XV),
14 including the two films at issue here, *Jupiter Ascending* and *The Dark Knight Rises*.
15 (*Id.*, ¶ XV; *id.* at 8-16, 17-29.)

16 As this Court is well aware, this is Plaintiff's fourth such lawsuit. (*See*
17 Compl. at 37-38.)⁵

- 18 • In *Basile v. Los Angeles Film School, LLC*, No. CV 14-00412 DMG
19 (MRW), Plaintiff alleged, *inter alia*, that *Prometheus*, *Men in Black III*,
20 and *The Dark Knight Rises* infringed upon Plaintiffs' Works, and he
21 sought \$2.2 billion in damages for this infringement and other torts.

22
23 ⁵ The Central District's Local Rules expressly reference California Code of Civil
24 Procedure section 391(b), which defines a "vexatious litigant" as a person that has
25 commenced at least five unmeritorious litigations in a seven-year period. L.R. 83-
26 8.4. Should Plaintiff file a fifth lawsuit, this Court should invoke the protections
27 afforded under Local Rule 83, including but not limited to "a directive to the Clerk
28 not to accept further filings from the litigant . . . without written authorization from a
judge of the Court or a Magistrate Judge, issued upon such showing of the evidence
supporting the claim as the judge may require." L.R. 83-8.2.

(See RJN, Exh. A.) This Court granted the defendant’s motion to compel arbitration on April 24, 2014 (*see id.*, Exh. B), and on July 13, 2015, the arbitrator issued her final award rejecting each of Plaintiff’s claims and ordering Plaintiff to pay \$96,573 in attorneys’ fees and costs. (*See id.*, Exh. C.)⁶

- In *Basile v. Twentieth Century Fox Film Corp.*, No. CV 14-04263 DMG (JPR), Plaintiff alleged that *Prometheus* infringed upon Plaintiffs’ Works and sought \$2 billion in damages. (*See id.*, Exh. D.) On August 19, 2014, this Court granted the defendants’ motion to dismiss Plaintiff’s copyright claim without leave to amend. (*See id.*, Exh. E.)
- In *Basile v. Sony Pictures Entertainment, Inc.*, No. CV 14-04264-DMG (JPR), Plaintiff alleged that *Men in Black III* infringed Plaintiffs’ Works and sought \$2 billion in damages. (*See id.*, Exh. F.) On August 19, 2014, this Court granted the defendants’ motion to dismiss without leave to amend. (*See id.*, Exh. G.)

III. LEGAL STANDARD FOR A RULE 12(b)(6) MOTION

Federal Rule of Civil Procedure 8(a)(2) requires that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. Proc. 8(a)(2)). To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing

⁶ Plaintiff’s motion to vacate this award is currently pending before this Court.

1 *Twombly*, 550 U.S. at 556). “[T]he tenet that a court must accept as true all of the
2 allegations contained in a complaint is inapplicable to legal conclusions.” *Id.*

3 While, ordinarily, the Court may only look to the face of the complaint when
4 deciding a Rule 12(b)(6) motion, *see Van Buskirk v. Cable News Network, Inc.*, 284
5 F.3d 977, 980 (9th Cir. 2002), the Court may also consider evidence on which the
6 complaint “‘necessarily relies’ if: (1) the complaint refers to the document; (2) the
7 document is central to the plaintiff’s claim; and (3) no party questions the
8 authenticity of the document.” *United States v. Corinthian Colleges*, 655 F.3d 984,
9 999 (9th Cir. 2011) (quoting *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006)).
10 “The court may treat such a document as ‘part of the complaint, and thus may
11 assume that its contents are true for purposes of a motion to dismiss under Rule
12 12(b)(6).’” *Marder*, 450 F.3d at 448 (quoting *United States v. Ritchie*, 342 F.3d
13 903, 908 (9th Cir. 2003)).

14 **IV. PLAINTIFF’S COMPLAINT SHOULD BE DISMISSED WITH**
15 **PREJUDICE AND WITHOUT LEAVE TO AMEND**

16 **A. Legal Standard for Direct Copyright Infringement**

17 “To establish a prima facie case of copyright infringement, a plaintiff must
18 show (1) ownership of a valid copyright and (2) violation by the alleged infringer of
19 at least one of the exclusive rights granted to copyright owners by the Copyright
20 Act.” *UMG Recordings, Inc. v. Augusto*, 628 F.3d 1175, 1178 (9th Cir. 2011)
21 (citing *Ellison v. Robertson*, 357 F.3d 1072, 1076 (9th Cir. 2004); 17 U.S.C.
22 § 501(a)). “Absent direct evidence of copying, proof of infringement involves fact-
23 based showings that the defendant had ‘access’ to the plaintiff’s work and that the
24 two works are ‘substantially similar.’” *Three Boys Music Corp. v. Bolton*, 212 F.3d
25 477, 481 (9th Cir. 2000) (quoting *Smith v. Jackson*, 84 F.3d 1213, 1218 (9th Cir.
26 1996)).

27 “[W]hen the copyrighted work and the alleged infringement are both before
28 the court, capable of examination and comparison, non-infringement can be

1 determined on a motion to dismiss.” *Christianson v. W. Publ’g Co.*, 149 F.2d 202,
2 203 (9th Cir. 1945) (citing cases). The Court may grant a motion to dismiss a
3 copyright infringement claim if it concludes that no reasonable jury could find that
4 the works are substantially similar. *See Zella v. E.W. Scripps Co.*, 529 F.Supp.2d
5 1124, 1130-31 (C.D. Cal. 2007) (citing cases).

6 The substantial-similarity test contains an extrinsic and intrinsic component.
7 *Funky Films, Inc. v. Time Warner Entm’t Co., L.P.*, 462 F.3d 1072, 1077 (9th Cir.
8 2006). At the pleadings stage, only the objective, extrinsic test applies. *See id.*
9 (intrinsic test is “exclusively the province of the jury”); *Zella*, 529 F.Supp.2d at
10 1133 (same). The Court “must take care to inquire only whether ‘the *protectable*
11 *elements, standing alone*, are substantially similar.’” *Cavalier v. Random House,*
12 *Inc.*, 297 F.3d 815, 822 (9th Cir. 2002) (quoting *Williams v. Crichton*, 84 F.3d 581,
13 588 (2d Cir. 1996)) (emphasis in original). “[W]hen applying the extrinsic test, a
14 court must filter out and disregard the non-protectible elements in making its
15 substantial similarity determination.” *Id.* at 822-23 (citing *Shaw v. Lindheim*, 919
16 F.2d 1353, 1361 (9th Cir. 1990); *Berkic v. Crichton*, 761 F.2d 1289, 1293-94 (9th
17 Cir. 1985)). The extrinsic test “focuses on ‘articulable similarities between the plot,
18 themes, dialogue, mood, setting, pace, characters, and sequence of events’ in two
19 works.” *Kouf v. Walt Disney Pictures & Television*, 16 F.3d 1042, 1045 (9th Cir.
20 1994) (citing *Berkic*, 761 F.2d at 1292).

21 **B. The Dark Knight Rises Is Not Substantially Similar to Plaintiff’s**
22 **Works**

23 As a matter of law, there is no substantial similarity between *The Dark Knight*
24 *Rises* and Plaintiff’s Works. The Court should thus dismiss Plaintiff’s infringement
25 claim with prejudice and without leave to amend.

26 **1. Plot and Sequence of Events**

27 The plots of Plaintiff’s Works and *The Dark Knight Rises* have virtually
28 nothing in common. As described above, *The Dark Knight Rises*—the final chapter

1 in a trilogy—depicts the hero being forced to return from exile eight years after the
2 death of Two-Face (Harvey Dent). (*See* Part II.B, *supra*.) The reclusive Dark
3 Knight (Batman) returns to save Gotham City from the brutal guerrilla terrorist Bane
4 with the help of the enigmatic Selina Kyle (Catwoman). (*See id.*) Plaintiff’s Works,
5 in contrast, involve (1) a Supreme Being returning to the world he had created in
6 order to destroy all individuals who had been unfaithful to him (*The World of*
7 *Jupiter*), and (2) a villain abusing time-travel technology in order to dominate the
8 world unless two protagonists (Earth and Mars) can prevent him from doing so
9 (*Crisis on Jupiter*). (*See* Part II.A, *supra*.)

10 The Ninth Circuit has found plots with far more similarities to be dissimilar as
11 a matter of law. *See, e.g., Benay v. Warner Bros. Entm’t, Inc.*, 607 F.3d 620, 625
12 (9th Cir. 2010) (describing two works about American war veterans who traveled to
13 Japan to train the Japanese army to combat a samurai uprising); *Funky Films*, 462
14 F.3d at 1081 (describing two works where fathers who operate family-run funeral
15 homes die, resulting in the subsequent operation of the homes by two sons, one of
16 whom has been estranged from the family prior to the father’s death); *Kouf*, 16 F.3d
17 at 1045-46 (describing two family comedy/adventure films about people who are
18 accidentally shrunk).

19 Given the absence of any actual similarities in plot or sequence, Plaintiff
20 offers a list of “comparisons” between the works. (*See* Compl. at 22-23.) Plaintiff’s
21 comparisons fail because (1) many of the plot lines he attributes to *The Dark Knight*
22 *Rises* are *not in the movie*, and (2) the similarities actually in the film are too generic
23 to enjoy copyright protection. Individually and collectively, Plaintiff’s comparisons
24 are insufficient to establish substantial similarity as a matter of law.

25 As a preliminary matter, there is no time travel, space travel, or brain-implant
26 technology in *The Dark Knight Rises*. (*See* RJN, Exh. H; Part II.B, *supra*.) The
27 Court may ignore Plaintiff’s allegations as to these “similarities.” *See Stechman v.*
28 *Hart Brewing, Inc.*, 143 F.3d 1293, 1295-96 (9th Cir. 1998) (observing that courts

1 may disregard factual allegations that are contradicted by judicially noticeable
2 facts). As but one example, Plaintiff’s claim that the “mechanical casing on Bane’s
3 head” is from “experimentation of brain implants” (Compl. at 27) is demonstrably
4 false: Bane uses a mask—not brain-implant technology—as a pain-relief device for
5 a childhood injury. (*See* RJN, Exh. H at 1:42:14.)

6 As for the other allegations of time and space travel and brain implants,
7 Plaintiff’s reliance on alleged footage that is nowhere to be found in *The Dark*
8 *Knight Rises* (*see* Compl. at 17-19, 22) is misplaced. *See Walker v. Time Life Films,*
9 *Inc.*, 784 F.2d 44, 52 (2d Cir. 1986) (where there is no substantial similarity between
10 a screenplay and the final film, earlier drafts are irrelevant); *Muller v. Twentieth*
11 *Century Fox Film Corp.*, 794 F.Supp.2d 429, 433 n.1 (S.D.N.Y. 2011), *aff’d sub*
12 *nom. Muller v. Anderson*, 501 F. App’x 81 (2d Cir. 2012) (same); *Flaherty v.*
13 *Filardi*, 388 F.Supp.2d 274, 284 n.4 (S.D.N.Y. 2005) (same). Because no
14 substantial similarity exists between Plaintiff’s Works and the final version of *The*
15 *Dark Knight Rises*, the Court need not consider Plaintiff’s descriptions of the
16 alleged footage that Defendants purportedly omitted from the film.⁷

17 Limited to purported similarities actually present in both works, Plaintiff’s
18 allegations boil down to the following:

- 19 • Both works present a villain who stole dangerous technology from a
20 scientist; and
- 21 • The villain in each work used to be an associate of the protagonist (and
22 a larger organization) but then “went rogue,” and is now assisted by
23 mercenaries.

24
25 ⁷ Even if the Court were to consider the concepts of time travel and brain-implant
26 technology that Plaintiff alleges were cut from *The Dark Knight Rises*, these themes
27 are too generic to implicate copyright infringement. *See, e.g., Feldman v. Twentieth*
28 *Century Fox Film Corp.*, 723 F.Supp.2d 357, 366 (D. Mass. 2010) (“time travel is a
general idea that is not subject to copyright protection”).

(Compl. at 22-23.) The Court, however, must “look[] beyond the vague, abstracted idea of a general plot” when assessing similarities. *Berkic*, 761 F.2d at 1293. “General plot ideas are not protected by copyright law; they remain forever the common property of artistic mankind.” *Id.* (citing *Litchfield v. Spielberg*, 736 F.2d 1352, 1357 (9th Cir. 1984); 3 *M. Nimmer on Copyright* § 13.03[A] (1984)). “Scenes-a-faire, or situations and incidents that flow necessarily or naturally from a basic plot premise, cannot sustain a finding of infringement.” *Cavalier*, 297 F.3d at 823 (citing *Berkic*, 761 F.2d at 1294). A villain stealing technology from a scientist for evil purposes, and a formerly benign individual “going rogue” against his former ally, are classic examples of “general plot ideas” that “flow necessarily or naturally from a basic plot premise,” *Berkic*, 761 F.2d at 1293; *Cavalier*, 297 F.3d at 823, which are woefully insufficient to sustain a copyright infringement claim.

2. Characters

Only characters that are “especially distinctive” are protected by copyright law. *Olson v. Nat’l Broad. Co., Inc.*, 855 F.2d 1446, 1452 (9th Cir. 1988) (citing cartoon characters as an example of a distinctive, copyrightable character); *Feldman*, 723 F.Supp.2d at 367 (“copyright protection does not extend to stock characters, such as a blond, blue-eyed hero or doctors in ‘hot and cold’ romances”). Characters with “traits that flow naturally from the works’ shared premises” cannot serve as a basis for infringement. *Benay*, 607 F.3d at 626 (citing *Olson*, 855 F.2d at 1451-53).

Plaintiff alleges that Bane (the villain in *The Dark Knight Rises*) is copied from two of his characters in *Crisis on Jupiter*: General 322 and Cifer. (See Compl. at 24-25 (General 322); 22-23; 27 (Cifer).) Comparing Bane and General 322, Plaintiff alleges “[t]hey are both bodybuilders and in virtually identical military style wardrobe.” (*Id.* at 24.) Even accepting this allegation as true, the concept of a muscular villain dressed in a military-style outfit is too common to be protectable. See, e.g., *Althouse v. Warner Bros. Entm’t*, No. CV 13-00696, 2014 WL 2986939,

1 at *3 (C.D. Cal. Apr. 28, 2014) (characters that have an enemy whom they hate and
2 that have nightmares of their significant other dying are standard elements common
3 to film and literature that are not protected by copyright law).

4 Moreover, as Plaintiff admits, his visualization of General 322 was not even
5 his own. The character photographed in the Complaint (*see* Compl. at 24, Exh. 22)
6 is not Plaintiff's but rather "a character from the game 'Gears of War' named
7 'Augustus Cole.'" (Compl. at 24.) As Plaintiff did not create the image of General
8 322, he lacks standing to assert claims arising from its infringement. *See Benay*,
9 607 F.3d at 624 (observing that ownership of a valid copyright is an essential
10 element of a copyright infringement claim).

11 As for Cifer, his only similarity with Bane is that both inhabit the
12 stereotypical role of evil villains intent on inflicting harm on the protagonists and
13 the greater population for their own empowerment. This, too, is neither a distinctive
14 nor protectable idea. The generic nature of Cifer's allegedly copied traits is
15 evidenced by the fact that Plaintiff has now alleged that Cifer is the basis for wildly
16 different characters in four motion pictures: Boris the Alien (an evil, bearded, one-
17 armed alien) in *Men in Black III*; David (a form of artificial intelligence) in
18 *Prometheus*; Bane (a masked, human militant) in *The Dark Knight Rises*; and
19 unnamed "supporting characters" (Compl. at 10) in *Jupiter Ascending*. (*See* RJN,
20 Exhs. D, F.) In each instance, although Plaintiff attempts to draw parallels between
21 characters in his works and the film in question, there are "few real similarities
22 between any of them." *Funky Films*, 462 F.3d at 1078.

23 Finally, the presence of characters in each work that do *not* appear in the other
24 weighs in favor of finding that the works are not substantially similar. *See id.* at
25 1078-79. There are dozens of characters in *The Dark Knight Rises* without
26 counterparts (alleged or actual) in Plaintiffs' Works, and aside from Cifer and
27 General 322, Plaintiff does not allege that Defendants copied the four other
28 characters in *Crisis on Jupiter* (Earth, Mars, Kurzweil, and Real Name Unknown

(see Compl., Exh. 1)), and does not claim Defendants copied any of the characters in *The World of Jupiter* whatsoever.⁸

3. Mood, Pace, Theme, Setting, and Dialogue

The works are completely different in every other relevant respect as well.

Mood. Plaintiff's Works present ominous stories full of dissolute people who have angered their creator. *The World of Jupiter* is a creation myth in which the Supreme Being returns to destroy all people who have lost their faith in him. *Crisis on Jupiter* addresses people who have endangered themselves by engaging in time travel and losing faith. In contrast, *The Dark Knight Rises* is a battle between a military revolutionary intent on destroying Gotham City and a billionaire socialite dedicated to protecting the city from the criminal underworld. To the extent that Plaintiff's Works and *The Dark Knight Rises* both present dark adventures containing violence, such vague similarities in mood are shared by hundreds of films and are not a basis for infringement.

Pace. *Crisis on Jupiter* comprises an eight-slide PowerPoint presentation, and *The World of Jupiter* is a two-paragraph Word document. (See Compl., Exhs. 1, 2.) In contrast, *The Dark Knight Rises* develops its story over 165 minutes of film. (See RJN, Exh. H.) To the extent Plaintiff's Works even have a pace, it is incomparable to *The Dark Knight Rises*. Indeed, "[t]he time period within which the movie is set is a factor for determining the pace of the movie." *Campbell v. Walt Disney Co.*, 718 F.Supp.2d 1108, 1115 (N.D. Cal. 2010). Whereas *The Dark Knight Rises* takes place in a relatively short period of time (see Part II.B, *supra*), Plaintiff's Works are far broader in temporal scope, involving the creation of a whole world, followed by evolution over multiple generations and an ultimate existential crisis. (See Compl., Exhs. 1, 2.)

⁸ Even if he had, those characters—Jupiter, Man, Woman, Earth, Heaven, Peace, and Love (see Compl., Exh. 2)—are too archetypal to be protectable. See *Feldman*, 723 F.Supp.2d at 367 (stock characters are not entitled to copyright protection).

1 **Theme.** Plaintiff's Works invoke a world where humans were created by
2 alien creators; Plaintiff admits *The World of Jupiter* is a "short story creation myth."
3 (Compl., ¶ XII.) In contrast, *The Dark Knight Rises* is an epic superhero film
4 focusing on humans in Gotham City. To the extent each of the works could be
5 interpreted as commentary on the tension between the forces of good versus evil,
6 such a theme is as ancient as it is fundamental to literature. *See Cavalier*, 297 F.3d
7 at 823 ("[f]amiliar stock scenes and themes that are staples of literature are not
8 protected" and hence cannot serve as grounds for substantial similarity); *Goldberg*
9 *v. Cameron*, 787 F.Supp.2d 1013, 1020-21 (N.D. Cal. 2011) (themes that are
10 commonplace in science fiction are not protectable); *Stromback v. New Line*
11 *Cinema*, 384 F.3d 283, 296-97 (6th Cir. 2004) ("the sequence of certain events
12 (main characters leaving Hell, battling their brother, the attempted killing of the
13 main character), racial allusions and a love interest" are "common themes and ideas
14 throughout literature and are beyond any level of abstraction at which copyright
15 protection might begin to attach").

16 **Setting.** The Complaint does not allege any similarities in setting between the
17 works. *Crisis on Jupiter* appears to take place on Jupiter. It is not clear whether
18 *The World of Jupiter* take places on Jupiter, Earth, or another world. *The Dark*
19 *Knight Rises*, on the other hand, takes place entirely on Earth, specifically in and
20 under Gotham City, Wayne Manor, the Bat Cave, Bane's prison, and Florence, Italy.
21 (See Part II.B, *supra*.) Because none of these locales is featured in Plaintiff's
22 Works, there can be no similarity.

23 **Dialogue.** "[E]xtended similarity of dialogue [is] needed to support a claim
24 of substantial similarity." *Olson*, 855 F.2d at 1450. Plaintiff's Works have no
25 dialogue, and Plaintiff does not allege otherwise. In contrast, *The Dark Knight Rises*
26 is a 165-minute film replete with dialogue.

27 Ultimately, there are virtually no similarities between Plaintiff's Works and
28 *The Dark Knight Rises*, and certainly no similarities of protectable expression that

1 could support Plaintiff's infringement claim. No amount of pleadings or exhibits
2 can change that fact, and Plaintiff's claim that *The Dark Knight Rises* infringes his
3 works should be dismissed with prejudice and without leave to amend.

4 **C. Jupiter Ascending Is Not Substantially Similar to Plaintiff's Works**

5 This Court should also dismiss Plaintiff's claim that *Jupiter Ascending*
6 infringes his Works, as once again, there is a complete absence of any similarity.

7 **1. Plot and Sequence of Events**

8 As set forth above, *Jupiter Ascending* involves a young woman named Jupiter
9 Jones discovering her destiny as an heiress of intergalactic nobility. (*See* Part II.C,
10 *supra*.) After Caine Wise, a genetically engineered ex-military hunter, arrives on
11 Earth to track her down, Jones begins to glimpse the fate that has been waiting for
12 her all along. (*See id.*) Her genetic signature marks her as next in line for an
13 inheritance that could alter the balance of the cosmos. (*See id.*) With the help of
14 Wise, she fights to protect the inhabitants of Earth from an ancient and destructive
15 industry involving the harvesting of living creatures to produce a type of youth
16 serum that enables immortality. (*See id.*) The plot and sequence of events in
17 *Jupiter Ascending* has nothing to do with Plaintiff's Works. (*Compare* Part II.C,
18 *supra* with Part II.A, *supra*.) *See Althouse*, 2014 WL 2986939, at *3 (rejecting
19 infringement claim where the basic premises of the two works were "so different
20 that that it would be unreasonable to find their plots substantially similar").

21 In addition, as he did with *The Dark Knight Rises*, Plaintiff makes claims
22 about *Jupiter Ascending* that are demonstrably false and can be ignored. *See*
23 *Stechman*, 143 F.3d at 1295-96. Plaintiff claims, for example, that *Jupiter*
24 *Ascending* "is premised on the fact of life on all planets having originated from the
25 planet Jupiter by Supreme beings from Jupiter." (Compl. at 10.) There is, however,
26 nothing in *Jupiter Ascending* suggesting that planetary life originated on the planet
27 Jupiter, or that it did so because of a supreme being on Jupiter. (*See* RJN, Exh. I;
28 Part II.C, *supra*.) To the contrary, the human species on Earth in *Jupiter Ascending*

1 were established by individuals from another planet in a distant solar system. (*See*
2 Part II.C, *supra*; RJN, Exh. I at 44:56, 45:38.) Indeed, the ending credits show that
3 the planets making up the universe form endless DNA patterns, suggesting an alien
4 creator on a scale much vaster than a planet in our solar system. (*See* Part II.C,
5 *supra*.) The *only* references to the planet Jupiter in *Jupiter Ascending* are (1) the
6 fact that the main character’s first name is Jupiter (her mother named her after her
7 father’s favorite planet), and (2) the character Balem operates a refinery on a planet
8 that looks like Jupiter (both have “Great Red Spots”). (*See id.*)

9 Stripped of its falsehoods, the Complaint alleges the following similarities in
10 plot and sequence between *Jupiter Ascending* and Plaintiff’s Works:

- 11 • Humans were created by alien creators;
- 12 • Supreme beings threaten mass extinctions;
- 13 • The protagonists in each work are the only ones who can save their
- 14 home planets;
- 15 • The protagonists use interplanetary travel to overcome the forces of
- 16 evil; and
- 17 • Lead characters in each work are members of the military.

18 (*See* Compl. at 10.)

19 Each of these similarities is extraordinarily common in science fiction (and
20 other genres) and thus falls far short of copyright protection. (*See* Part IV.B.1,
21 *supra* (citing *Benay*, 607 F.3d at 625; *Funky Films*, 462 F.3d at 1081; *Kouf*, 16 F.3d
22 at 1045-46; *Berkic*, 761 F.2d at 1293; *Cavalier*, 297 F.3d at 823).)

23 Plaintiff argues that “[t]he fact that the two works have identical titles also
24 weighs in Plaintiff’s favor.” (Compl. at 13.) As is self-evident, the works do not
25 have identical titles. Plaintiff’s Works are entitled *Crisis on Jupiter* and *The World*
26 *of Jupiter*; Defendants’ work is *Jupiter Ascending*. Each title shares one word,
27 “Jupiter,” a term deployed in thousands of artistic works over the millennia by
28 individuals seeking to invoke, *inter alia*, the ancient Romans’ chief deity and a

1 planet in our solar system. In any event, even if the titles were similar in terms of
2 any material original to Plaintiff, “[a] similarity of titles is not enough to overcome
3 the failure to show that the contents of the [works] is substantially similar.” *Phillips*
4 *v. Murdock*, 543 F.Supp.2d 1219, 1225 (D. Haw. 2008).

5 2. **Characters**

6 The Complaint alleges that unnamed “supporting characters” in *Jupiter*
7 *Ascending* mimic the concept of brain or eye-implant technology from his character
8 Cifer in *Crisis on Jupiter*. (Compl. at 10, 11.) In this regard, Plaintiff also
9 compares an unnamed character in *Jupiter Ascending* by using a photograph. (*See*
10 *id.* at 11.)⁹ Even assuming, *arguendo*, that a character in *Jupiter Ascending* has
11 brain or eye-implant technology, the concept of such implants is commonplace in
12 science fiction, as Plaintiff himself acknowledged in a prior lawsuit. (*See* RJN, Exh.
13 G at 3 n.1.)

14 Indeed, Plaintiff himself copied characters with brain implants from third
15 parties’ works when he developed *Crisis on Jupiter*. To visualize his brain-
16 implanted character Kurzweil in *Crisis on Jupiter*, for example, Plaintiff simply
17 copied the photograph of the character Locutus (played by Patrick Stewart) from an
18 episode of *Star Trek*. (*See* Compl., Exh. 1, slide 7.) Likewise, for the brain-
19 implanted appearance of his character Cifer, Plaintiff simply copied an image from
20 another (illegible) website. (*See id.*, Exh. 1, slide 4.) Stripping away Plaintiff’s use
21 of images he did not create and thus does not own, *see Benay*, 607 F.3d at 624,
22 Plaintiff is left with nothing more than a vague invocation of the generic concept of
23 brain or eye implants, which fall far short of a protectable expression. *See Cavalier*,
24 297 F.3d at 823 (“[f]amiliar stock scenes and themes” cannot serve as grounds for
25

26 _____
27 ⁹ The photograph is illegible in the copies of the Complaint that Plaintiff served on
28 Defendants and uploaded onto Pacer. (*See* Compl. at 11.)

1 substantial similarity); *Goldberg*, 787 F.Supp.2d at 1020-21 (themes that are
2 commonplace in science fiction are not protectable).

3 Plaintiff also argues that both Caine Wise in *Jupiter Ascending* and Earth and
4 Mars in *Crisis on Jupiter* are members of the military who help save planets.
5 (Compl. at 10.) Even accepting this allegation as true, this concept is even more
6 commonplace than brain or eye implants, and equally inadequate to establish
7 copyright infringement.

8 Finally, as with *The Dark Knight Rises*, *Jupiter Ascending* contains dozens of
9 characters with no actual or alleged similarities to the characters in Plaintiff's
10 Works, which weighs heavily against a finding of similarity. *See Funky Films*, 462
11 F.3d at 1078-79.

12 3. Mood, Pace, Theme, Setting, and Dialogue

13 **Mood.** *Jupiter Ascending* combines special effects and an innovative musical
14 score with a female science-fiction hero attempting to romance an alien. These
15 creative qualities have nothing in common with *The World of Jupiter* or *Crisis on*
16 *Jupiter* other than perhaps the familiar science fiction tropes of aliens and space
17 travel.

18 **Pace.** *Jupiter Ascending* is a 127-minute full-length motion picture. *The*
19 *World of Jupiter* is a two-paragraph Word document and *Crisis on Jupiter* is an
20 eight-page PowerPoint presentation. *Jupiter Ascending* takes place in a
21 straightforward narrative arc across a period of several years, whereas *Crisis on*
22 *Jupiter* appears to rely heavily on time travel over hundreds of years and *The World*
23 *of Jupiter* takes place on a Biblical time scale. The pace of the works is
24 incomparable.

25 **Theme.** The theme of *Jupiter Ascending* could be described as the
26 consumption or use of a working class for the benefit of their indifferent overseers.
27 (See Part II.C, *supra*.) Earth is essentially a human farm, seeded after the extinction
28 of the dinosaurs by the an alien ruling class, until saved by the protagonist. (See *id.*)

1 In contrast, *The World of Jupiter* appears to be a cynical story about the lesser
2 attributes of humans and their inability to remain faithful to their supreme being, and
3 *Crisis on Jupiter* addresses heroes trying to saving a world in crisis due to time
4 travel technology. (See Part II.A, *supra*.) To the extent Plaintiff's Works share with
5 *Jupiter Ascending* common themes such as good versus evil, human versus
6 alien/supreme being, anti-authoritarianism, or the perils of advanced technologies,
7 "[t]hese are common themes and ideas throughout literature and are beyond any
8 level of abstraction at which copyright protection might begin to attach."
9 *Stromback*, 384 F.3d at 296.

10 **Setting.** *Jupiter Ascending* takes place in Chicago, Illinois and a nearby farm;
11 St. Petersburg, Russia; various spaceships; and distant planets. (See Part II.C,
12 *supra*.) One of the planets, home to Balem's mining facility, bears a resemblance to
13 Jupiter due its Great Red Spot. Even assuming, *arguendo*, that this planet is in fact
14 Jupiter, a common setting of a given planet (or outer space in general) among works
15 is far too generic to establish a substantial similarity.

16 **Dialogue.** Again, Plaintiff's Works have no dialogue, so this inquiry weighs
17 entirely against Plaintiff. See *Olson*, 855 F.2d at 1450.

18 Plaintiff's Works have nothing more in common with *Jupiter Ascending* than
19 *The Dark Knight Rises*. Whatever trivial or superficial similarities exist between the
20 works, those similarities are not protectable under copyright law and hence cannot
21 form the basis for any infringement claim. See, e.g., *Funky Films*, 462 F.3d at 1081
22 (rejecting infringement claim in the absence of "any concrete or articulable
23 similarities").

24 **D. Plaintiff's Conspiracy Allegations Are Irrelevant**

25 Much of the Complaint is filled with allegations of a sinister conspiracy
26 against Plaintiff and his family by Defendants, the Los Angeles Film School,
27 Congresswoman and Minority Leader of the U.S. House of Representatives Nancy
28 Pelosi, Sony Pictures and its former co-chairwoman Amy Pascal, Twentieth Century

1 Fox, and the Beverly Hills Police Department. (*See, e.g.*, Compl. at 30-37.)
2 Because these allegations are irrelevant to the lack of substantial similarities among
3 the works, for the purposes of this Motion Defendants will not burden the Court
4 with a detailed response. For the record, Defendants deny all of Plaintiff's
5 allegations.

6 ***E. Leave to Amend Would Be Futile***

7 The general rule that leave to amend should be granted liberally does not
8 apply here, because Plaintiff's "pleading could not possibly be cured by the
9 allegation of other facts." *Knappenberger v. City of Phoenix*, 566 F.3d 936, 942
10 (9th Cir. 2009) (citing *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000);
11 *Knevelbaard Dairies v. Kraft Foods, Inc.*, 232 F.3d 979, 983 (9th Cir. 2000)).
12 Nothing Plaintiff could allege in an amended complaint could change the fact that
13 neither *The Dark Knight Rises* nor *Jupiter Ascending* is in any way similar to
14 Plaintiff's Works. The defects in Plaintiff's Complaint are thus incurable, and the
15 Court should deny leave to amend. *See Campbell*, 718 F.Supp.2d at 1116 (no leave
16 to amend where the works were not substantially similar as a matter of law); *Gadh*
17 *v. Spiegel*, No. CV 14-855, 2014 WL 1778950, at *6 (C.D. Cal. Apr. 2, 2014)
18 (dismissal without leave to amend where works were not substantially similar);
19 *Mandeville-Anthony v. Walt Disney Co.*, No. CV 11-2137, 2012 WL 4017785, at
20 **4-5 (C.D. Cal. July 28, 2012) (same). (*See also*, RJN, Exhs. E, G.)

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1 **V. CONCLUSION**

2 For the foregoing reasons, Defendants respectfully request that the Court
3 grant this Motion and dismiss Plaintiff's Complaint with prejudice. Because this is
4 now Plaintiff's fourth Complaint alleging infringement of *The World of Jupiter* or
5 *Crisis on Jupiter*, Defendants also request that the Court issue a warning to Plaintiff
6 that, if he files any additional such complaints, the Court will entertain a request for
7 an order declaring him a vexatious litigant.

8
9 DATED: August 10, 2015

CALDWELL LESLIE & PROCTOR, PC
LINDA M. BURROW
ARWEN R. JOHNSON
MATTHEW O'BRIEN

12
13
14 By /s/

LINDA M. BURROW

15 Attorneys for Defendants Warner Bros.
16 Entertainment Inc., Legend Pictures, LLC
17 (erroneously sued as Legendary Pictures),
18 Christopher Nolan, Jonathan Nolan, David S.
19 Goyer, Andrew Wachowski, and Lana
20 Wachowski
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 725 South Figueroa Street, 31st Floor, Los Angeles, CA 90017-5524.

On August 10, 2015, I served true copies of the following document(s) described as **DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT WITH PREJUDICE PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6); MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action as follows:

Constantino Basile
10630 Moorpark Street, #202
North Hollywood, CA 91602


Plaintiff Pro Se

Tel.: (213) 304-7965

BY OVERNIGHT DELIVERY: I enclosed said document(s) in an envelope or package provided by Overnight Delivery and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of Overnight Delivery or delivered such document(s) to a courier or driver authorized by Overnight Delivery to receive documents.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on August 10, 2015, at Los Angeles, California.


Susan Crippen